

## Department of Homeland Security

## § 320.1

American Committee for Liberation of the Peoples of Russia, Inc.; American Committee for Liberation from Bolshevism, Inc.).

[33 FR 255, Jan. 9, 1968. Redesignated and amended at 56 FR 50489, Oct. 7, 1991]

### §§ 319.7–319.10 [Reserved]

#### § 319.11 Filing of application.

(a) *General.* An applicant under this part must submit an application for naturalization in accordance with the form instructions with the fee required by 8 CFR 103.7(b)(1). An alien spouse applying for naturalization under section 319(b) of the Act who is described in 8 CFR 319.2 must also submit a statement of intent containing the following information about the citizen spouse's employment and future intent:

- (1) The name of the employer and;
- (i) The nature of the employer's business; or
- (ii) The ministerial, religious, or missionary activity in which the employer is engaged;
- (2) Whether the employing entity is owned in whole or in part by United States interests;
- (3) Whether the employing entity is engaged in whole or in part in the development of the foreign trade and commerce of the United States;
- (4) The nature of the activity in which the citizen spouse is engaged;
- (5) The anticipated period of employment abroad;
- (6) Whether the alien spouse intends to reside abroad with the citizen spouse; and,
- (7) Whether the alien spouse intends to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse.

(b) *Applications by military spouses—(1) General.* The alien spouses of United States military personnel being assigned abroad must satisfy the basic requirements of section 319(b) of the Act and of paragraph (a) of this section.

(2) *Government expense.* In the event that transportation expenses abroad for the alien spouse are to be paid by military authorities, a properly executed Certificate of Overseas Assignment to Support Application to File

Petition for Naturalization, DD Form 1278 will be submitted in lieu of the statement of intent required by paragraph (a) of this section. Any DD Form 1278 issued more than 90 days in advance of departure is unacceptable for purposes of this section.

(3) *Private expense.* In the event that the alien spouse is not authorized to travel abroad at military expense, the alien spouse must submit in lieu of the statement of intent required by paragraph (a) of this section:

- (i) A copy of the citizen spouse's military travel orders,
- (ii) A letter from the citizen spouse's commanding officer indicating that the military has no objection to the applicant traveling to and residing in the vicinity of the citizen spouse's new duty station; and
- (iii) Evidence of transportation arrangements to the new duty station.

[56 FR 50489, Oct. 7, 1991, as amended at 76 FR 53798, Aug. 29, 2011]

## PART 320—CHILD BORN OUTSIDE THE UNITED STATES AND RESIDING PERMANENTLY IN THE UNITED STATES; REQUIREMENTS FOR AUTOMATIC ACQUISITION OF CITIZENSHIP

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AUTHORITY: 8 U.S.C. 1103, 1443; 8 CFR part 2.

SOURCE: 66 FR 32144, June 13, 2001, unless otherwise noted.

### § 320.1 What definitions are used in this part?

As used in this part, the term:

*Adopted* means adopted pursuant to a full, final and complete adoption. If a foreign adoption of an orphan was not full and final, was defective, or the unmarried U.S. citizen parent or U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings, the child is not considered

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to have been fully, finally and completely adopted and must be readopted in the United States. Readoption requirements may be waived if the state of residence of the United States citizen parent(s) recognizes the foreign adoption as full and final under that state's adoption laws.

*Adopted child* means a person who has been adopted as defined above and who meets the requirements of section 101(b)(1)(E) or (F) of the Act.

*Child* means a person who meets the requirements of section 101(c)(1) of the Act.

*Joint custody*, in the case of a child of divorced or legally separated parents, means the award of equal responsibility for and authority over the care, education, religion, medical treatment, and general welfare of a child to both parents by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence.

*Legal custody* refers to the responsibility for and authority over a child.

(1) For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:

(i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),

(ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased), or

(iii) In the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

(2) In the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree. In the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of

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residence. The Service will consider a U.S. citizen parent who has been awarded “joint custody,” to have legal custody of a child. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

### § 320.2 Who is eligible for citizenship?

(a) *General*. To be eligible for citizenship under section 320 of the Act, a person must establish that the following conditions have been met after February 26, 2001:

(1) The child has at least one United States citizen parent (by birth or naturalization);

(2) The child is under 18 years of age; and

(3) The child is residing in the United States in the legal and physical custody of the United States citizen parent, pursuant to a lawful admission for permanent residence.

(b) *Additional requirements if child is adopted*. If adopted, the child must meet all of the requirements in paragraph (a) of this section as well as satisfy the requirements applicable to adopted children under section 101(b)(1) of the Act.

### § 320.3 How, where, and what forms and other documents should be filed?

(a) *Application*. Individuals who are applying for a certificate of citizenship on their own behalf should submit the request in accordance with the form instructions on the form prescribed by USCIS for that purpose. An application for a certificate of citizenship under this section on behalf of a child who has not reached the age of 18 years must be submitted by that child's U.S. citizen biological or adoptive parent(s), or legal guardian.

(b) *Evidence*. (1) An applicant under this section must establish eligibility as described in 8 CFR 320.2. An applicant must submit the following supporting evidence unless such evidence is already contained in USCIS administrative file(s):

(i) The child's birth certificate or record;

(ii) Marriage certificate of child's parents (if applicable);